

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
MOLOKAI PUBLIC UTILITIES, INC.	)	PUC Docket 2009-0048
	)	
For Review and Approval of Rate	)	
Increases; Revised Rate Schedules;	)	
And Revised Rules	)	
_____	)	

STAND FOR WATER  
MOTION TO INTERVENE  
&  
CERTIFICATE OF SERVICE

FILED  
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PUBLIC UTILITIES  
COMMISSION

STAND FOR WATER  
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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

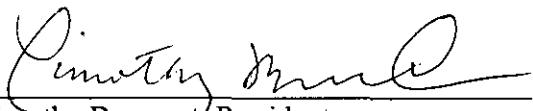
In the Matter of the Application of	)	
	)	
WAI'OLA O MOLOKA'I, INC.	)	
	)	PUC Docket 2009-0049
For Review and Approval of Rate	)	
Increases; Revised Rate Schedules;	)	
And Revised Rules	)	
_____	)	

MOTION TO INTERVENE

Comes now Stand for Water, an unincorporated Hawai'i association whose membership is composed of water ratepayers and residents of the island of Moloka'i, and respectfully moves the Public Utilities Commission of the State of Hawai'i for an order to allow it to intervene and to become a party to these proceedings. This Motion is based on Subchapter 4, Section 6-61-55 of the Commission's Rules, and is supported by the Association's Memorandum in Support of Motion to Intervene.

DATED: September 14, 2009, Maunaloa, Hawai'i

STAND FOR WATER

  
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Timothy Brunnert, President

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MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Stand for Water is an unincorporated Hawai'i association located on the island of Moloka'i. Rule §6-61-55 of the Public Utility Commission (PUC) rules provides that "[a] person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and interest of the applicant." Stand for Water is a "person," as defined in Rule §6-61-2. The President of Stand for Water, Tim Brunnert, represents the group in this Motion to Intervene. Should the PUC grant this Motion, Stand for Water will secure representation by an attorney in good standing and entitled to practice before the Hawaii Supreme Court, pursuant to Rule §6-61-12.

*This Motion to Intervene is timely filed under Rule §6-61-57. The public hearing on this docket was held on the island of Moloka'i on September 3. The Notice of Public Hearing specified that any motion to intervene must be filed with the PUC by September 14, 2009, which is the date of filing for this Motion.*

*The concerns that Stand for Water seeks to address as an Intervenor are reasonably pertinent to this rate case, and will not unreasonably broaden the issues already presented.*

## **1. Nature of Applicant's Statutory or Other Right to Participate in the Hearing**

Stand for Water was organized in response to applications for rate and charge increases by Wai'ola O Moloka'i, Inc. (hereinafter "Wai'ola") and Molokai Public Utility, Inc. (hereinafter "MPU"). A year ago the PUC itself, in an unprecedented move, initiated a rate case on behalf of the two utilities. Affected ratepayers were given only one opportunity to provide input on the PUC's proposal, and the utilities were not required to provide any audited documentation in support of the higher rates. Now that the PUC is following its normal rate-making procedures, Stand for Water is seeking to intervene so that it can provide material information that was unavailable to the PUC in the 2008 proceedings.

Stand for Water's mission is to insure that:

- Water utility rates and charges are just and reasonable;
- Drinking water supplied by the utilities is safe;
- Water delivery infrastructure is kept in good repair;
- Legal obligations to supply water are honored; and
- Moloka'i's limited water resources are protected.

The group is composed of ratepayers from all of the communities served by these two utilities: Kala'e, Kualapu'u, Maunaloa, and the West End of Moloka'i. In addition to these ratepayers, the group also includes non-ratepayers who rely on the same water supply infrastructure that serves the residential customers of these utilities. These non-ratepayers include Ho'olehua Homestead farmers whose crops are dependent on water from the Molokai Irrigation System, which is used by to transport water to its West End customers.

Stand for Water worked to rally the Moloka'i community to join together in support of reasonable water rates. The group gathered information, conducted

educational outreach, organized public demonstrations, and established communication with the State Consumer Advocate. Members of the group attended the PUC's September 3 public hearing on this docket and many testified against the utilities on the grounds listed above.

## **2. Nature and Extent of Applicant's Interest**

Members of Stand for Water have substantial interests in the outcome of this rate case. MPU has applied for PUC permission to raise water rates by 202.2%, and to raise meter service charges, fire protection charges, water availability charges and bulk sales charges by 202.2%, and to raise meter deposit and connection charges by 100%. And MPU also asks the PUC to approve an automatic power cost adjustment clause and a purchased fuel adjustment clause, which would authorize the utility on its own to change water rates based on fluctuations in electricity and purchased fuel costs. If the PUC approves these requests, annual revenues to MPU will increase by 201.5%.

The financial interests of Stand for Water members are clearly threatened by the proposed rate increases which, if approved, may become the highest public water utility rates in the nation.

In addition to financial interests, Stand for Water members also have critical health and safety interests in the outcome of these proceedings. The water supplied by MPU routinely fails water quality tests for toxins and sediments. Despite the PUC's 2008 emergency approval of a significant rate increase, MPU has not used any of the extra revenues generated by the increase to make repairs to its water system, or to improve the quality of purification procedures. The PUC should not grant MPU's request

for additional rate increases without requiring the utility to address these health and safety concerns.

Another major concern for MPU customers is the condition of the water system. Sediments leach into drinking water through leaking pipes. Major breaks in water lines are not repaired, sometimes for months at a time. Fire hydrants lack sufficient water pressure to be of any use against a fire. And although unimproved lots were marketed as agricultural lots, with the promise that agricultural water would be provided, no agricultural system was ever built. Landowners who wish to farm must use potable water for irrigation.

Stand for Water members also have a strong interest in the legality of MPU's water system. Neither MPU nor its parent Molokai Properties Limited (hereinafter "MPL") has a valid permit to pump water from Well 17, which supplies a portion of the water delivered to MPU customers. In December 2006, the Hawai'i Supreme Court invalidated all pumping permits for the well. To date neither the utility nor its parent company has filed for new permits, but MPU continues to pump water from Well 17 without a permit.

MPU's parent company, MPL, is also on notice from the state Department of Agriculture that it should cease using the agricultural Moloka'i Irrigation System (MIS) for transmission of water to the West End until an environmental assessment and/or EIS has been completed. This notice was issued after MPL's contract to use the MIS expired in 2006. But MPU continues to use the MIS transmission system despite the lack of a contract to do so. This creates conflicts with farmers in Ho'olehua, who also rely on the MIS for irrigation water. They are often ordered to cut back water use during the dry

summer months in order to protect the West End domestic users who get their drinking water from the same system.

And finally, Stand for Water members have a substantial interest in the reliability of both the utility and its parent, MPL. The PUC initiated rate increase proceedings in 2008 after MPL announced that it would not continue to provide water utility service to its customers. But even after the PUC approved the increased rates, MPL refused to commit to continue operating the utilities. The County of Maui was finally forced to file suit against MPL to compel the company to honor more than 30 contractual promises to provide utility services, and the case is still in litigation. MPU is owned by a foreign company (Hong Kong's Guoco Group), in possible violation of HRS §269-17.5 which bars majority foreign ownership of Hawai'i utilities. Even if the County wins its lawsuit, it may be difficult to enforce a U.S. court decision against this foreign owner, should it decide to abandon its water utilities.

### **3. Effect of Potential PUC Decision on Applicant's Interests**

With regard to financial interests, MPU customers will clearly be hurt by the rate increases proposed in this docket. As a consequence of the 2008 increase, many West End residents have stopped watering their grounds, and those who were farming have been forced to abandon their crops. Stories of dead and dying trees and gardens abound throughout the community. Where the trees and plants were a source of income, the income has been lost due to the higher rates.

Water quality is a critical health and safety issue. If MPU's rate increase request is granted without any requirement to repair and upgrade the existing system, the health of its customers will remain in jeopardy.

Stand for Water's interests in the legality and reliability of MPU's water system are also at stake in the current rate case. In an administrative case brought by the state Department of Health against MPL and MPU, the hearing officer found that "the cessation of drinking water ... services by ... MPU ... and/or MPL is a imminent peril to the public health and safety." (*Department of Health vs. Molokai Public Utilities et al.*, Docket No. 08-SDW-EO-01). But MPL and MPU have already made it clear that they have little respect for Hawai'i law. In this case, it is critical that the PUC safeguard consumers against the possibility that their drinking water service will be shut off by a company that is beyond the jurisdiction of the state's enforcement powers, and thus appears to have no difficulty defying its laws.

#### **4. Other Means Available to Protect Applicant's Interests**

The PUC is charged with setting fair rates, insuring public safety, and assuring compliance with federal and state laws by utilities. It is the only forum in which these concerns can be addressed. There are no other means by which Stand for Water can protect the interests described above.

#### **5. Extent to Which Applicant's Interests Will Be Represented By Other Parties**

No other existing or prospective party to these proceedings has the responsibility to protect the Stand for Water interests described above. Clearly MPU will not represent the group's interests. And the Consumer Advocate will be focused on determining whether the proposed rates and charges are adequately justified by the utility. No other party will address issues regarding health and safety, water quality, or the legality and reliability of the system.



It is possible that the West Molokai Association of landowners will also ask to intervene in these proceedings. But if this group is permitted to become a party, it is unlikely that its interests will overlap with those of Stand for Water.

#### **6. Extent to Which Applicant Can Assist in Development of a Sound Record**

Stand for Water members include individuals with intimate knowledge of MPL's water systems and business practices. This knowledge will be extremely valuable in guiding discovery, analyzing data, and cross-examining the utility. Stand for Water also plans to provide expert testimony on the issues that affect its interests. Following are names of individuals who have already agreed to serve as expert witnesses in the proceedings, and brief descriptions of the subject areas for their testimony:

Liana Brunnert, Bookkeeper

Subject: MPL Accounting Procedures

Experience: Employed by MPL as a bookkeeper. Familiar with MPL accounting procedures for utilities.

Tim Brunnert, General Contractor

Subject: Waterlines; Maintenance; Infrastructure System

Experience: Custom homebuilder. Knowledgeable regarding water systems.

Peter Johnson, Scientist

Subject: Drinking water quality

Experience: Founder and retired CEO, Agouron Pharmaceuticals, Inc., now a division of Pfizer Inc. Partner, Puragua Company, provider of highly purified drinking water in Baja California.

Stephen Morgan, Businessman & Small Farmer

Subject: Water and West End Farming

Experience: Active farmer on the West End for 20 years. Member of the Moloka'i Water Working Group. Participated in PUC's 2002-2003 water rate hearings.

Charles "Skip" Roy, Licensed Real Estate Agent

Subjects: MPL revenues from land sales; Water meters; Attempts to purchase utilities

Experience: Involved in 12 real estate transactions with MPL in the last 4 years. Attempted to purchase MPL water utilities.

Ray Tensfeldt, Designer of Water Purveying Systems

Subject: MPL Water Delivery and Distribution Systems

Experience: Worked on Moloka'i water systems, including sterilization of Kualapu'u reservoir, water treatment at Pu'unana

Glenn Teves, UH Agricultural Extension Agent

Subjects: Moloka'i Irrigation System, Well 17, Impact of MPL Use of MIS on Farming

Experience: Involved since 1981 in legal issues regarding the MIS. Member of the MIS Advisory Council. Testified as an expert witness in water cases including MPL's Waiola well proposal, Kukui & MPL's Well 17 case.

Taryn Waros, Hotel Manager

Subject: Internal Operational and Accounting Practices for MPL

Experience: Employed by MPL as General Manager of the Molokai Lodge for 3 years.

#### **7. Extent to Which Applicant's Participation Will Broaden Issues or Cause Delays**

Stand for Water will address issues that are entirely relevant to this proceeding, as described in the foregoing paragraphs. To the extent that these issues must be considered by the PUC in making its decision, time spent in addressing them will not constitute undue delay.

#### **8. Extent to Which Applicant's Interest Differs from the General Public**

Stand for Water represents residents of Moloka'i who will be affected by the PUC's decision in this case. The interest of this group is different from the public at large.

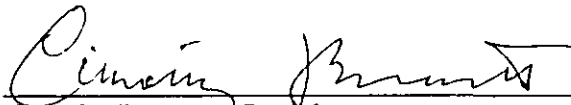
#### **9. Whether Applicant Supports or Opposes Relief Sought**

Stand for Water opposes MPU's application.

## 10. Summary

Based on the foregoing explanation of Stand for Water's concerns, we respectfully submit that the group's allegations are reasonably pertinent to and do not unreasonably broaden the issues already presented within this docket. And for these reasons, we respectfully request that this Commission grant our Motion to Intervene as a party to this proceeding.

DATED: September 14, 2009, Maunaloa, Hawai'i

A handwritten signature in cursive script, appearing to read "Timothy Brunnert", is written over a horizontal line.

Timothy Brunnert, President  
STAND FOR WATER

# CERTIFICATE OF SERVICE

The foregoing Motion to Intervene and Memorandum in Support of Motion to Intervene were filed with the Public Utilities Commission and served on this by mail, postage prepaid, and properly addressed to the following parties:

**PUBLIC UTILITIES COMMISSION**

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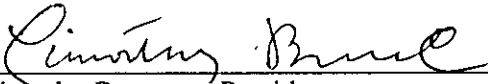
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DATED: September 14, 2009, Maunaloa, Hawai'i

  
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Timothy Brunnert, President  
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